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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,767	12/03/2003	Margaret Marie Nixon	AQMED.0103	4214
22858	7590	09/26/2006	EXAMINER	
CARSTENS & CAHOON, LLP P O BOX 802334 DALLAS, TX 75380			MENDOZA, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3734	
DATE MAILED: 09/26/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,767

Applicant(s)

NIXON, MARGARET MARIE

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-10 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

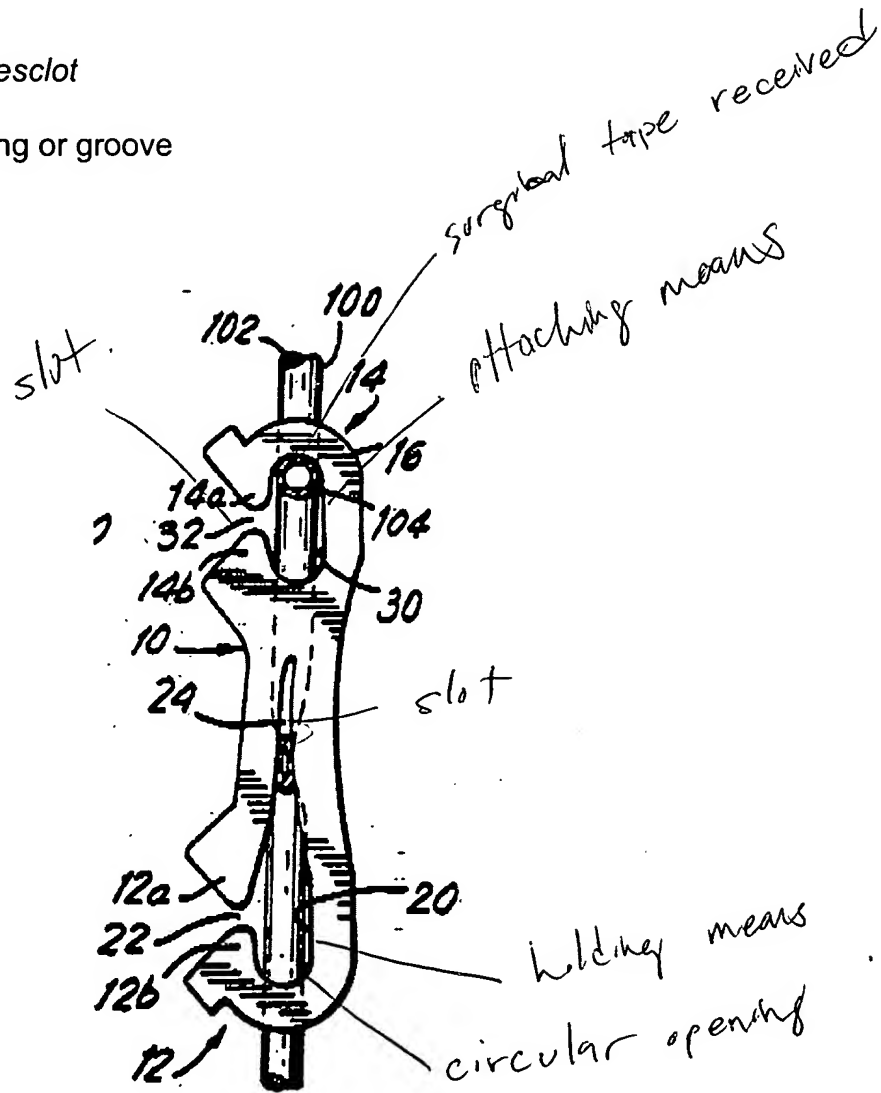
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1, 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Skakoon 5232193.
3. As to claims 1 and 3-5, Skakoon teaches a tensioner body, the tensioner body having attachment means; holding means; wherein the attaching means and the holding means are collinear and located along the longitudinal axis of the tensioner body; wherein the attaching means receives surgical tape at a point along the longitudinal axis of the tensioner body; wherein the attaching means comprises an elongated slot through the tensioner body; wherein the holding means comprises a circular opening through the tensioner body; wherein the holding means comprises an elongated slot through the tensioner body.
4. Main Entry: **slot** (http://www.m-w.com/cgi-bin/dictionary)
Pronunciation: 'slät
Function: *noun*
Etymology: Middle English, the hollow running down the middle of the breast,

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from Middle French *esclot***1 a** : a narrow opening or groove

5.

**FIG. 4**

6. Claims 1-4 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Fogarty 3999076.

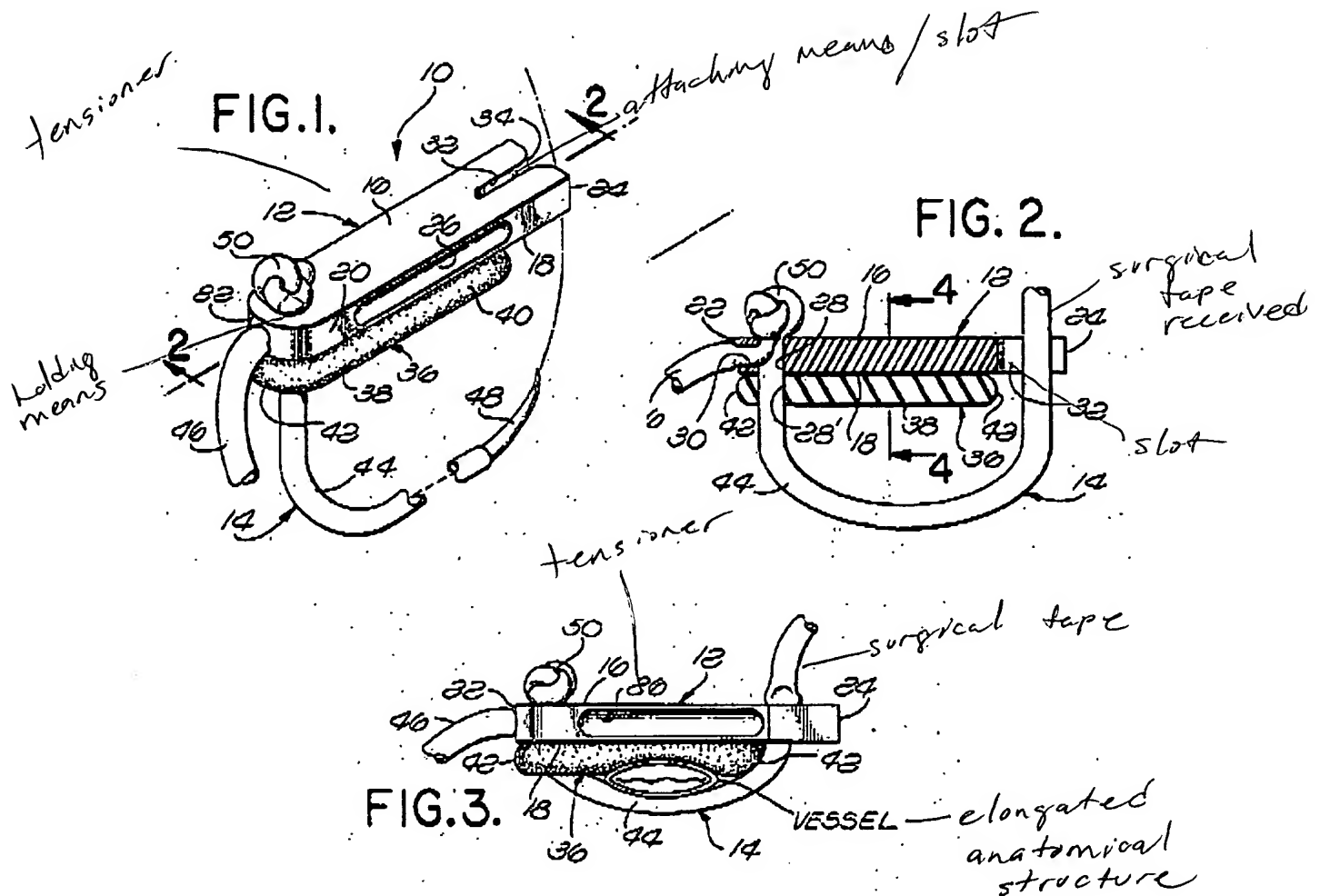
7. As to claims 1-4, Forgarty teaches a tensioner body, the tensioner body having attachment means; holding means; wherein the attaching means and the holding means are collinear and located along the longitudinal axis of the tensioner body; wherein the attaching means receives surgical tape at a point along the longitudinal axis of the tensioner body; wherein the tensioner is formed

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of plastic (col. 2, line 34); wherein the attaching means comprises an elongated slot through the tensioner body; wherein the holding means comprises a circular opening through the tensioner body

8. As to claims 11-13, Fogarty teaches a method of clamping, the method comprising the steps of: attaching a tensioner, having a body, to a length of surgical tape; passing a portion of the surgical tape around the elongated anatomical structure structure; and securing the surgical tape in place by inserting a section of the surgical tape into a gripping portion of the tensioner; wherein the attaching step comprises securing a free end of the length of surgical tape in a slot in the tensioner; wherein the securing step comprises threading the length of surgical tape through an opening in the tensioner.

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Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lock.

11. Lock teaches the tensioner of claim 1. It should be noted that Lock fails to teach wherein the tensioner is formed of plastic. It would have been obvious to

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one having ordinary skill in the art at the time the invention was made to make the tensioner of Lock out of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Also it is common knowledge to those of ordinary skill to choose a material that has sufficient strength for the intended use of that material. Furthermore, it is well known in the art of surgical clips/clamps to use plastic. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic to form the tensioner because it is inexpensive and its rigid, long lasting characteristics.

Prior Art

12. The new cited prior art US 3910280 and US 3880166 are considered relevant to the present invention, but are not relied upon.

Allowable Subject Matter

13. Claims 6-10 are allowable over the prior art of record.

14. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or render obvious the overall claimed invention of a tensioner for surgical tape comprising a tensioner body having a first opening and a second opening passing therethrough, wherein the first opening has a second section having a size and shape to restrainably engage the surgical tape of a given size; wherein the second opening has a size and shape to restrainably engage the surgical tape of a given size, and wherein

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the first opening and the second opening are collinear and located along the longitudinal axis of the body.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER**